

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ROBERT GONZALES, individually,  
and by and through his next friends  
and guardians, David and Christina Romero,**

Plaintiff,

v.

**No. CV 09-0021 JCH/RLP**

**MIKE MARQUEZ, BRIAN SANCHEZ,  
RENE DOLAN, in their individual and  
Official capacities as police officers, and  
The CITY OF ALBUQUERQUE;**

**DISTRICT ATTORNEY KARI BRANDENBURG,  
ASSISTANT DISTRICT ATTORNEY BRIAN MCKAY,  
ASSISTANT DISTRICT ATTORNEY LISA MURRAY TRABAUDO,**

**FLOYD GONZALES, and JOHN DOES 1-3,  
in their official and individual capacities as  
Metropolitan Detention Center employees, and  
BERNALILLO COUNTY,**

Defendants.

**ANSWER TO COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF  
ARISING FROM CONSTITUTIONAL DEPRIVATIONS AND  
VIOLATIONS OF THE NEW MEXICO TORT CLAIMS ACT**

Defendants, Floyd Gonzales and Bernalillo County (“MDC Defendants”), through their attorneys, Robles, Rael & Anaya, P.C. (Terri S. Beach, Esq.), states the following for their Answer to Complaint for Damages and Equitable Relief Arising from Constitutional Deprivations and Violations of the New Mexico Tort Claims Act:

### **JURISDICTION AND VENUE**

1. MDC Defendants admit the allegations made in paragraph 1 of Plaintiff's Complaint.

2. MDC Defendants admit the allegations made in paragraph 2 of Plaintiff's Complaint.

### **PARTIES**

3. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 3 of Plaintiff's Complaint and, therefore, deny these allegations.

4. MDC Defendants admit that Defendant Floyd Gonzales is a full-time employee of the Metropolitan Detention Center, but affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 4 of Plaintiffs' Complaint. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 4 of Plaintiff's Complaint and, therefore, deny these remaining allegations.

5. MDC Defendants admit that at all times material Defendant Floyd Gonzales was acting under color of law and within the scope and course of his employment, but deny the remaining allegations made in paragraph 5 of Plaintiff's complaint directed to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 5 of Plaintiff's Complaint and, therefore, deny these remaining allegations.

6. MDC Defendants admit that Defendant Floyd Gonzales was employed by the Metropolitan Detention Center in 2005, but deny the remaining allegations made in paragraph 6 of Plaintiff's complaint.

### **FACTUAL BACKGROUND**

7. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 7 of Plaintiff's Complaint and, therefore, deny these allegations.

8. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 8 of Plaintiff's Complaint and, therefore, deny these allegations.

9. With regard to paragraph 9 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 9 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 1 of Plaintiff's Complaint and, therefore, deny same.

10. With regard to paragraph 10 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 10 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 10 of Plaintiff's Complaint and, therefore, deny same.

11. MDC Defendants deny the allegations made in paragraph 11 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 11 of Plaintiff's Complaint and, therefore, deny same.

12. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 12 of Plaintiff's Complaint and, therefore, deny these allegations.

13. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 13 of Plaintiff's Complaint and, therefore, deny these allegations.

14. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 14 of Plaintiff's Complaint and, therefore, deny these allegations.

15. With regard to paragraph 15 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 15 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 15 of Plaintiff's Complaint and, therefore, deny same.

16. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 16 of Plaintiff's Complaint and, therefore, deny these allegations.

17. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 17 of Plaintiff's Complaint and, therefore, deny these allegations.

18. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 18 of Plaintiff's Complaint and, therefore, deny these allegations.

19. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 19 of Plaintiff's Complaint and, therefore, deny these allegations.

20. With regard to paragraph 20 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 20 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 20 of Plaintiff's Complaint and, therefore, deny same.

21. With regard to paragraph 21 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 21 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 21 of Plaintiff's Complaint and, therefore, deny same.

22. MDC Defendants deny the allegations made in paragraph 22 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 22 of Plaintiff's Complaint and, therefore, deny same.

23. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 23 of Plaintiff's Complaint and, therefore, deny these allegations.

24. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 24 of Plaintiff's Complaint and, therefore, deny these allegations.

25. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 25 of Plaintiff's Complaint and, therefore, deny these allegations.

26. MDC Defendants deny the allegations made in paragraph 26 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 26 of Plaintiff's Complaint and, therefore, deny same.

27. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 27 of Plaintiff's Complaint and, therefore, deny these allegations.

28. MDC Defendants deny the allegations made in paragraph 28 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor

information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 28 of Plaintiff's Complaint and, therefore, deny same.

29. MDC Defendants deny the allegations made in paragraph 29 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 29 of Plaintiff's Complaint and, therefore, deny same.

30. MDC Defendants deny the allegations made in paragraph 30 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 30 of Plaintiff's Complaint and, therefore, deny same.

31. MDC Defendants deny the allegations made in paragraph 31 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 31 of Plaintiff's Complaint and, therefore, deny same.

32. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 32 of Plaintiff's Complaint and, therefore, deny these allegations.

33. MDC Defendants deny the allegations made in paragraph 33 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 33 of Plaintiff's Complaint and, therefore, deny same.

34. MDC Defendants deny the allegations made in paragraph 34 of Plaintiff's

Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 34 of Plaintiff's Complaint and, therefore, deny same.

35. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 35 of Plaintiff's Complaint and, therefore, deny these allegations.

36. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 36 of Plaintiff's Complaint and, therefore, deny these allegations.

37. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 37 of Plaintiff's Complaint and, therefore, deny these allegations.

38. MDC Defendants deny the allegations made in paragraph 38 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 38 of Plaintiff's Complaint and, therefore, deny same.

39. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 39 of Plaintiff's Complaint and, therefore, deny these allegations.

40. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 40 of Plaintiff's Complaint and, therefore, deny these allegations.



41. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 41 of Plaintiff's Complaint and, therefore, deny these allegations.

42. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 42 of Plaintiff's Complaint and, therefore, deny these allegations.

43. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 43 of Plaintiff's Complaint and, therefore, deny these allegations.

44. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 44 of Plaintiff's Complaint and, therefore, deny these allegations.

45. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 45 of Plaintiff's Complaint and, therefore, deny these allegations.

46. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 46 of Plaintiff's Complaint and, therefore, deny these allegations.

47. MDC Defendants deny the allegations made in paragraph 47 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 47 of Plaintiff's Complaint and, therefore, deny same.

48. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 48 of Plaintiff's Complaint and, therefore, deny these allegations.

49. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 49 of Plaintiff's Complaint and, therefore, deny these allegations.

50. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 50 of Plaintiff's Complaint and, therefore, deny these allegations.

51. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 51 of Plaintiff's Complaint and, therefore, deny these allegations.

52. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 52 of Plaintiff's Complaint and, therefore, deny these allegations.

53. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 53 of Plaintiff's Complaint and, therefore, deny these allegations.

54. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 54 of Plaintiff's Complaint and, therefore, deny these allegations.

55. MDC Defendants have neither knowledge nor information sufficient to form a

belief as to the truth of the allegations made in paragraph 55 of Plaintiff's Complaint and, therefore, deny these allegations.

56. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 56 of Plaintiff's Complaint and, therefore, deny these allegations.

57. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 57 of Plaintiff's Complaint and, therefore, deny these allegations.

58. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 58 of Plaintiff's Complaint and, therefore, deny these allegations.

59. MDC Defendants deny the allegations made in paragraph 59 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 59 of Plaintiff's Complaint and, therefore, deny same.

60. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 60 of Plaintiff's Complaint and, therefore, deny these allegations.

61. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 61 of Plaintiff's Complaint and, therefore, deny these allegations.

62. MDC Defendants have neither knowledge nor information sufficient to form a

belief as to the truth of the allegations made in paragraph 62 of Plaintiff's Complaint and, therefore, deny these allegations.

63. MDC Defendants deny the allegations made in paragraph 63 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 63 of Plaintiff's Complaint and, therefore, deny same.

64. With regard to paragraph 64 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 64 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 64 of Plaintiff's Complaint and, therefore, deny same

65. With regard to paragraph 65 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 65 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 65 of Plaintiff's Complaint and, therefore, deny same

66. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 66 of Plaintiff's Complaint and, therefore, deny these allegations.

67. MDC Defendants have neither knowledge nor information sufficient to form a

belief as to the truth of the allegations made in paragraph 67 of Plaintiff's Complaint and, therefore, deny these allegations.

68. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 68 of Plaintiff's Complaint and, therefore, deny these allegations.

69. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 69 of Plaintiff's Complaint and, therefore, deny these allegations.

70. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 70 of Plaintiff's Complaint and, therefore, deny these allegations.

71. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 71 of Plaintiff's Complaint and, therefore, deny these allegations.

72. MDC Defendants deny the allegations made in paragraph 72 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 72 of Plaintiff's Complaint and, therefore, deny same.

73. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 73 of Plaintiff's Complaint and, therefore, deny these allegations.

74. MDC Defendants have neither knowledge nor information sufficient to form a

belief as to the truth of the allegations made in paragraph 74 of Plaintiff's Complaint and, therefore, deny these allegations.

75. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 75 of Plaintiff's Complaint and, therefore, deny these allegations.

76. With regard to paragraph 76 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 76 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 76 of Plaintiff's Complaint and, therefore, deny same.

77. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 77 of Plaintiff's Complaint and, therefore, deny these allegations.

78. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 78 of Plaintiff's Complaint and, therefore, deny these allegations.

79. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 79 of Plaintiff's Complaint and, therefore, deny these allegations.

80. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 80 of Plaintiff's Complaint and,

therefore, deny these allegations.

81. With regard to paragraph 81 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 81 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 81 of Plaintiff's Complaint and, therefore, deny same.

82. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 82 of Plaintiff's Complaint and, therefore, deny these allegations.

83. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 83 of Plaintiff's Complaint and, therefore, deny these allegations.

84. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 84 of Plaintiff's Complaint and, therefore, deny these allegations.

85. With regard to paragraph 85 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 85 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 85 of Plaintiff's Complaint and, therefore, deny same.

86. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 86 of Plaintiff's Complaint and, therefore, deny these allegations.

87. With regard to paragraph 87 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 87 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 87 of Plaintiff's Complaint and, therefore, deny same.

88. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 88 of Plaintiff's Complaint and, therefore, deny these allegations.

89. MDC Defendants deny the allegations made in paragraph 89 of Plaintiff's Complaint.

90. MDC Defendants deny the allegations made in paragraph 90 of Plaintiff's Complaint.

91. MDC Defendants deny the allegations made in paragraph 91 of Plaintiff's Complaint.

92. MDC Defendants admit the allegations made in paragraph 92 of Plaintiff's Complaint.

93. MDC Defendants deny the allegations made in paragraph 93 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor



information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 93 of Plaintiff's Complaint and, therefore, deny same.

94. MDC Defendants deny the allegations made in paragraph 94 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 94 of Plaintiff's Complaint and, therefore, deny same.

95. MDC Defendants deny the allegations made in paragraph 95 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 95 of Plaintiff's Complaint and, therefore, deny same.

96. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 96 of Plaintiff's Complaint and, therefore, deny these allegations.

97. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 97 of Plaintiff's Complaint and, therefore, deny these allegations.

98. With regard to paragraph 98 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 98 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 98 of Plaintiff's Complaint and, therefore, deny same.

99. MDC Defendants reallege all of their previous and subsequent answers to Plaintiffs' Complaint as their answer to paragraph 99 of Plaintiff's Complaint.

**COUNT I**  
**FOURTH AMENDMENT**  
**42 U.S.C. SECTION 1983**  
**UNREASONABLE SEIZURE AND DETENTION**

100. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 100 of Plaintiff's Complaint and, therefore, deny these allegations.

101. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 101 of Plaintiff's Complaint and, therefore, deny these allegations.

102. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 102 of Plaintiff's Complaint and, therefore, deny these allegations.

103. MDC Defendants deny the allegations made in paragraph 103 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 103 of Plaintiff's Complaint and, therefore, deny same.

104. With regard to paragraph 104 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 104 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information

sufficient to form a belief as to the truth of the allegations made in paragraph 104 of Plaintiff's Complaint and, therefore, deny same.

105. With regard to paragraph 105 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 105 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 105 of Plaintiff's Complaint and, therefore, deny same.

106. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 106 of Plaintiff's Complaint and, therefore, deny these allegations.

107. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 107 of Plaintiff's Complaint and, therefore, deny these allegations.

108. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 108 of Plaintiff's Complaint and, therefore, deny these allegations.

109. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 109 of Plaintiff's Complaint and, therefore, deny these allegations.

110. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 110 of Plaintiff's Complaint and,

therefore, deny these allegations.

111. MDC Defendants deny the allegations made in paragraph 111 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 111 of Plaintiff's Complaint and, therefore, deny same.

112. MDC Defendants deny the allegations made in paragraph 112 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 112 of Plaintiff's Complaint and, therefore, deny same.

113. With regard to paragraph 113 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 113 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 113 of Plaintiff's Complaint and, therefore, deny same.

114. With regard to paragraph 114 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 114 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 114 of Plaintiff's Complaint and, therefore, deny same.

115. MDC Defendants have neither knowledge nor information sufficient to form a

belief as to the truth of the allegations made in paragraph 115 of Plaintiff's Complaint and, therefore, deny these allegations.

116. With regard to paragraph 116 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 116 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 116 of Plaintiff's Complaint and, therefore, deny same.

117. With regard to paragraph 117 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 117 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 117 of Plaintiff's Complaint and, therefore, deny same.

118. With regard to paragraph 118 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 118 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 118 of Plaintiff's Complaint and, therefore, deny same.

119. MDC Defendants deny the allegations made in paragraph 119 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor

information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 119 of Plaintiff's Complaint and, therefore, deny same.

**COUNT II**  
**VIOLATION OF THE FIFTH AMENDMENT: DELIBERATELY**  
**OBTAINING A FALSE CONFESSION**

120. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 120 of Plaintiff's Complaint and, therefore, deny these allegations.

121. MDC Defendants deny the allegations made in paragraph 121 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 121 of Plaintiff's Complaint and, therefore, deny same.

122. With regard to paragraph 122 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 122 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 122 of Plaintiff's Complaint and, therefore, deny same.

123. With regard to paragraph 123 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 123 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 123 of Plaintiff's

Complaint and, therefore, deny same.

124. MDC Defendants deny the allegations made in paragraph 124 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 124 of Plaintiff's Complaint and, therefore, deny same.

**COUNT III**  
**FOURTEENTH AMENDMENT**  
**PROCEDURAL DUE PROCESS**  
**42 U.S.C SECTION 1983**

125. With regard to paragraph 125 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 125 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 125 of Plaintiff's Complaint and, therefore, deny same.

126. With regard to paragraph 126 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 126 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 126 of Plaintiff's Complaint and, therefore, deny same.

127. With regard to paragraph 127 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or

otherwise respond to the legal conclusions alleged in paragraph 127 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 127 of Plaintiff's Complaint and, therefore, deny same.

128. With regard to paragraph 128 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 128 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 128 of Plaintiff's Complaint and, therefore, deny same.

129. With regard to paragraph 129 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 129 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 129 of Plaintiff's Complaint and, therefore, deny same.

130. With regard to paragraph 130 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 130 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 130 of Plaintiff's Complaint and, therefore, deny same.



131. With regard to paragraph 131 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 131 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 131 of Plaintiff's Complaint and, therefore, deny same.

132. MDC Defendants deny the allegations made in paragraph 132 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 132 of Plaintiff's Complaint and, therefore, deny same.

**COUNT IV  
FOURTEENTH AMENDMENT  
SUBSTANTIVE DUE PROCESS  
42 U.S.C. SECTION 1983**

133. With regard to paragraph 133 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 133 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 133 of Plaintiff's Complaint and, therefore, deny same.

134. With regard to paragraph 134 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 134 of Plaintiff's Complaint. To

the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 134 of Plaintiff's Complaint and, therefore, deny same.

135. With regard to paragraph 135 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 135 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 135 of Plaintiff's Complaint and, therefore, deny same.

136. With regard to paragraph 136 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 136 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 136 of Plaintiff's Complaint and, therefore, deny same.

137. With regard to paragraph 137 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 137 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 137 of Plaintiff's Complaint and, therefore, deny same.

138. MDC Defendants deny the allegations made in paragraph 138 of Plaintiff's

Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 138 of Plaintiff's Complaint and, therefore, deny same.

**COUNT V: 42 U.S.C. SECTION 1983 MALICIOUS PROSECUTION  
UNDER THE FOURTH OR FOURTEENTH AMENDMENTS**

139. With regard to paragraph 139 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 139 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 139 of Plaintiff's Complaint and, therefore, deny same.

140. MDC Defendants deny the allegations made in paragraph 140 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 140 of Plaintiff's Complaint and, therefore, deny same.

141. With regard to paragraph 141 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 141 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 141 of Plaintiff's Complaint and, therefore, deny same.

142. MDC Defendants deny the allegations made in paragraph 142 of Plaintiff's

Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 142 of Plaintiff's Complaint and, therefore, deny same.

143. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 143 of Plaintiff's Complaint and, therefore, deny these allegations.

144. MDC Defendants deny the allegations made in paragraph 144 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 144 of Plaintiff's Complaint and, therefore, deny same.

145. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 145 of Plaintiff's Complaint and, therefore, deny these allegations.

146. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 146 of Plaintiff's Complaint and, therefore, deny these allegations.

147. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 147 of Plaintiff's Complaint and, therefore, deny these allegations.

148. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 148 of Plaintiff's Complaint and, therefore, deny these allegations.

149. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 149 of Plaintiff's Complaint and, therefore, deny these allegations.

150. With regard to paragraph 150 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 150 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 150 of Plaintiff's Complaint and, therefore, deny same.

151. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 151 of Plaintiff's Complaint and, therefore, deny these allegations.

152. MDC Defendants deny the allegations made in paragraph 152 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 152 of Plaintiff's Complaint and, therefore, deny same.

153. MDC Defendants deny the allegations made in paragraph 153 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 153 of Plaintiff's Complaint and, therefore, deny same.

#### **COUNT VI: CONSTITUTIONAL VIOLATIONS BY MDC EMPLOYEES**

154. MDC Defendants deny the allegations made in paragraph 154 of Plaintiff's

Complaint.

155. With regard to paragraph 155 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 155 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 155 of Plaintiff's Complaint and, therefore, deny same.

156. MDC Defendants deny the allegations made in paragraph 156 of Plaintiff's Complaint.

157. MDC Defendants admit that an incident was investigated, however deny the remaining allegations made in paragraph 157 of Plaintiff's Complaint.

158. MDC Defendants deny the allegations made in paragraph 158 of Plaintiff's Complaint.

159. MDC Defendants deny the allegations made in paragraph 159 of Plaintiff's Complaint.

**COUNT VII**  
**STATE LAW TORTS**  
**NMSA 41-4-12**

160. With regard to paragraph 160 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 160 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 160 of Plaintiff's

Complaint and, therefore, deny same.

161. With regard to paragraph 161 of Plaintiff's Complaint, MDC Defendants affirmatively state that Federal Rule of Civil Procedure 8(b) does not require them to answer or otherwise respond to the legal conclusions alleged in paragraph 161 of Plaintiff's Complaint. To the extent that an answer is required, MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the allegations made in paragraph 161 of Plaintiff's Complaint and, therefore, deny same.

162. MDC Defendants deny the allegations made in paragraph 162 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 162 of Plaintiff's Complaint and, therefore, deny same.

163. MDC Defendants deny the allegations made in paragraph 163 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 163 of Plaintiff's Complaint and, therefore, deny same.

164. MDC Defendants deny the allegations made in paragraph 164 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 164 of Plaintiff's Complaint and, therefore, deny same.

**COUNT VIII**  
**EQUITY CLAIMS**

165. MDC Defendants deny the allegations made in paragraph 165 of Plaintiff's

Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 165 of Plaintiff's Complaint and, therefore, deny same.

166. MDC Defendants deny the allegations made in paragraph 166 of Plaintiff's Complaint as to the MDC Defendants. MDC Defendants have neither knowledge nor information sufficient to form a belief as to the truth of the remaining allegations made in paragraph 166 of Plaintiff's Complaint and, therefore, deny same.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

None of the actions described in the Plaintiff's Complaint constitutes a violation of his constitutional rights.

#### **Second Affirmative Defense**

The actions of MDC Defendants were objectively reasonable under the circumstances and authorized by the clearly established law, entitling them to absolute and/or qualified immunity.

#### **Third Affirmative Defense**

The Plaintiff alleged a number of causes of action which fail to state a claim for which relief may be granted. See Fed.R.Civ.P. 12(b)(6).

#### **Fourth Affirmative Defense**

The Plaintiff's injuries, if any, were proximately caused by an independent intervening cause for which MDC Defendants are not liable.

#### **Fifth Affirmative Defense**



The Plaintiff failed to file his complaint within the New Mexico Tort Claims Act's two year statute of limitations.

**Sixth Affirmative Defense**

The Plaintiff failed to provide MDC Defendants with actual or written notice of his tort claim as required by the New Mexico Tort Claims Act.

**Seventh Affirmative Defense**

The Plaintiff failed to mitigate his damages.

**Eighth Affirmative Defense**

MDC Defendants' alleged negligence or intentional torts, if any, must be compared with the intentional torts and negligence of Plaintiff.

**Ninth Affirmative Defense**

Under 42 U.S.C. § 1983, punitive damages are not recoverable against the Bernalillo County or the individual Defendant in his official capacity.

**Tenth Affirmative Defense**

Under the New Mexico Tort Claims Act, punitive damages are not recoverable.

**Eleventh Affirmative Defense**

Under the New Mexico Tort Claims Act, attorney's fees are not recoverable.

**Twelfth Affirmative Defense**

Under the New Mexico Tort Claims Act, pre-judgment and post-judgment interest is not recoverable.

**JURY DEMAND**

Defendants demand a trial by jury for all claims which may be tried by a jury.

**WHEREFORE**, MDC Defendants having fully answered Plaintiff's Complaint, pray that Plaintiff's Complaint be dismissed with prejudice, MDC Defendants be awarded the costs incurred herein and for such other relief as the Court deems just and proper.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Terri S. Beach  
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(505) 242-1106 (facsimile)

I hereby certify that on this  
3<sup>rd</sup> day of February, 2009, the  
foregoing was electronically  
served through the CM/ECF  
system to the following:

Brad D. Hall, Esq.  
[brad@bhallfirm.com](mailto:brad@bhallfirm.com)

/s/ Terri S. Beach  
Terri S. Beach, Esq.